

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

Darrell W. Clifford,	)	
	)	
Plaintiff,	)	<b>ORDER ADOPTING REPORT</b>
	)	<b>AND RECOMMENDATION</b>
vs.	)	
	)	Case No. 1:17-cv-026
Former Warden (Don Redman), NDSP	)	
Leanne K. Bertsch (Director) DOCR for the	)	
State of North Dakota	)	
	)	
Defendants.	)	

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The Plaintiff, Darrell W. Clifford, is an inmate at the North Dakota State Penitentiary (“NDSP”). He initiated this *pro se* civil rights action against the Defendants on February 3, 2017. See Docket Nos. 1 and 7. Clifford alleges the Defendants policy of prohibiting inmates from possessing sexually explicit materials violates his right. The Defendants filed a Rule 12(b)(6) motion to dismiss for failure to state a claim on May 24, 2017. See Docket No. 11. Clifford did not respond to the motion.

On July 21, 2017, Magistrate Judge Charles S. Miller, Jr. issued a Report and Recommendation wherein he recommended granting the motion to dismiss based upon Clifford’s failure to respond. See Docket No. 13. The parties were given fourteen (14) days to file any objections to the Report and Recommendation. No objections were filed. However, Clifford filed a motion to amend his complaint on August 16, 2017. See Docket No. 17. The Defendants filed a response in opposition to the motion to amend on August 30, 2017. See Docket No. 18.

The Court has carefully reviewed the Report and Recommendation, the relevant case law, and the entire record, and finds the Report and Recommendation to be persuasive. The Court agrees

with the Defendants that any attempt to amend the complaint would be futile. The NDSP's policy of prohibiting mail that contains sexually explicit material clearly serves a legitimate penological interest and thus any challenge to the policy, whether facial or as applied, fails. See Hodgson v. Fabian, 378 F. App'x 592, 594 (8th Cir. 2010). Both the original complaint and the proposed amended complaint fail to state a claim upon which relief may be granted. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 13) in its entirety; **GRANTS** the Defendants' motion to dismiss (Docket No. 11); **DENIES** the motion to amend (Docket No. 17); and **DISMISSES** this case with prejudice. The Court certifies that an appeal may not be taken in forma pauperis because such an appeal would not be frivolous. Let judgment be entered accordingly.

**IT IS SO ORDERED.**

Dated this 20th day of September, 2017.

/s/ Daniel L. Hovland  
Daniel L. Hovland, Chief Judge  
United States District Court